



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Hon. P. L. Marquess  
County Auditor  
Wharton County  
Wharton, Texas

Dear Sir:

Opinion No. O-4319  
Re: Is it constitutional for the  
Federal Government to levy and  
collect excise taxes on articles  
manufactured and sold to states  
and political subdivisions  
thereof?

We have given careful consideration to your request  
for our opinion upon the captioned question. We quote from  
your letter as follows:

"On November 22, this County was invoiced with a  
business machine which had been purchased during the  
month from the Monroe Calculating Machine Company, Inc.,  
of Orange, New Jersey; and included in the billing was  
the Federal Excise Tax which is ordinarily never billed  
to counties and if it is there is an Exemption Invoice  
which can be signed to get this tax back. This of course  
is due to the fact that in the past it was understood  
that the Federal Government could not tax States or ~~sub-~~  
~~sidi-~~aries or subdivisions of said State.

"Along with this billing was a printed slip which  
informed us that the tax must be paid and that exemption  
certificates were no longer acceptable in lieu of the tax.  
Thinking perhaps that because this was a new ruling that  
the company had made an error in interpreting it to apply  
to counties, I first wrote to the Treasury Department at  
Austin for an interpretation. This inquiry was answered  
and in the second paragraph of this reply I found that the  
office there was 'in receipt of information that on November  
20, 1944, the exemption of Federal manufacturers' excise tax

Hon. P. L. Marquess - page 2

was revoked on business machines sold or transferred to any State, Territory of the United States, or political subdivision thereof. - -'. It appears that the source of the information had ruled that these states and so forth could be taxes as well as an individual. This appears to be contrary to well founded principles of constitutional government as practiced in the past, and it further appears if this tax can be levied on States and subdivisions thereof, that any type of levy can be made on them."

We have discussed with the Collector of Internal Revenue the several regulations involved in the matter under consideration, and have been so informed by him that the printed slip referred to in the second paragraph of your letter, above set forth, concerns federal agencies only and has no connection with states or subdivisions thereof.

26 U. S. C. A., Section 3406, imposes a tax on business machines sold by manufacturers. Section 3442 of the same title provides that under regulations prescribed by the Commissioner with the approval of the Secretary, this tax shall not be imposed with respect to sales for the exclusive use of any state or subdivision thereof.

On November 20, 1944, the Commissioner revoked the regulations relating to tax free sales of articles for the use of states or political subdivisions thereof. We quote the text of this revocation as the same appears on page 13 LW 2254 of The United States Law Week:

"The revocation is effective presently with respect to articles sold and transferred to any state, territory of the United States, political subdivision thereof, or the District of Columbia, except that the revocation shall not apply to deny an exemption otherwise applicable with respect to articles sold or transferred pursuant to a contract entered into prior to such date. T.D.5418, Nov. 20, 1944."

We are of the opinion we can dispose of your problem without the necessity of delving into the constitutional queries presented by your request. It will be noted that the revocation

Hon. F. L. Marquess, page 3

of the regulation relating to tax free sales, effective November 30, 1944, contains the proviso that it shall not apply to an exemption otherwise applicable with respect to articles sold pursuant to a contract entered into prior to such date. The invoice of Nov. 22, 1944, attached to your request, shows that the date of the order was October 27, 1944, and thus a contract for the sale of the business machine was entered into prior to the effective date of the revocation, and the exemption of the tax would be applicable.

We are returning your copy of invoice No. 5111696, together with your letter from the Collector of Internal Revenue.

We trust the foregoing sufficiently answers your question.

Yours very truly

ATTORNEY GENERAL OF TEXAS

(signed)

By:

Robert O. Koch  
Assistant

ROK:AMM:zd

APPROVED JAN 30, 1945

Charles C. Ashbey

FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE  
BY BWB CHAIRMAN